Original

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the matter of	)	
	)	
Application by SBC Communications, Inc.	)	
for Authorization Under Section 271 of the	)	CC Docket
Communications Act to Provide In-Region	)	No. 97-121
InterLATA Services in the State of Oklahoma	)	
	)	

COMMENTS OF AT&T IN OPPOSITION TO SBC'S SECTION 271 APPLICATION FOR OKLAHOMA

APPENDIX - VOLUME II

APPENDIX TO COMMENTS OF AT&T IN OPPOSITION TO SBC'S SECTION 271 APPLICATION FOR OKLAHOMA

TAB	AFFIDAVIT	SUBJECT(S) COVERED
A	Steven R. Allen and Dean A. Gropper	SWBT's Ability to Discriminate Against IXCs and CLECs
B	William J. Baumol	Public Interest
C	Denise Crombie	Separate Subsidiary Requirements
D	Nancy Dalton	Interfaces for Operations Support Systems
E	Robert V. Falcone and Steven E. Turner	Unbundled Network Elements and Interconnection
F	Phillip L. Gaddy	Resale
G	R. Glenn Hubbard and William H. Lehr	Public Interest
H	Daniel C. Keating	Poles, Ducts, Conduits and Rights-of-way
I	Mark Lancaster	Number Portability and IntraLATA Toll Dialing Parity
J	Thomas C. Pelto	License Requirements
K	C. Michael Pfau	Nondiscriminatory Access to Operations Support Systems
L	Daniel P. Rhinehart	SBC's Proposed Rates
M	Steven E. Turner	Local Competition in Oklahoma
N	Rian J. Wren	SWBT Resistance to AT&T Local Competition Entry Efforts

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AFFIDAVIT

OF

ROBERT V. FALCONE AND STEVEN E. TURNER

ON BEHALF OF

AT&T CORP.

AT&T EXHIBIT E

TABLE OF CONTENTS

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AFFIDAVIT OF ROBERT V. FALCONE
AND STEVEN E. TURNER
ON BEHALF OF
AT&T CORP.

I. INTRODUCTION AND QUALIFICATIONS

A. Robert V. Falcone

1. My name is Robert V. Falcone. My business address is 295 North Maple Avenue, Basking Ridge, New Jersey, 07920.

2. I am employed by AT&T as a District Manager in the Local Services Division. My current job duties include providing network technical support for new service applications.

3. I hold a B.S. in Business Administration from Adelphi University, Garden City, New York. In addition, I have attended a number of technical and business related courses offered by the AT&T School of Business.

4. I began my career with AT&T in 1970 working in a major switching center in New York City. In 1978, I became responsible for administration of the New York City 4ESS switching complexes. In addition, I later became responsible for routing translations in AT&T's Northeastern Region, divestiture planning, and access bill verification. In 1985, I assumed responsibility for access engineering in the Northeast Region. I also served as project manager for the business service development organization, provided technical support for SS7 network interconnection, and was a network consultant for Unitel of Canada. In 1995, I assumed my current position in the Local Services Division.

5. I have testified or submitted statements on behalf of AT&T in arbitration proceedings under the Communications Act of 1934 as amended by the Telecommunications Act of 1996 (Act) in several states, including proceedings involving Southwestern Bell Telephone Company (SWBT) in Oklahoma, Kansas, and Texas. I also have testified in several proceedings involving other regional Bell operating companies in other parts of the country.

B. Steven E. Turner

6. My name is Steven E. Turner. I head my own telecommunications and financial consulting firm, Kaleo Consulting.

7. I hold a Bachelor of Science degree in Electrical Engineering from Auburn University in Auburn, Alabama. I also hold a Masters of Business Administration in Finance from Georgia State University in Atlanta, Georgia.

8. From 1986 through 1987, I was employed by General Electric in its Advanced Technologies Department as a Research Engineer developing high speed graphics simulators. In 1987, I joined AT&T and, during my career there, held a variety of engineering,

operations, and management positions. These positions covered the switching, transport, and signaling disciplines within AT&T. From 1995 until 1997, I worked in the Local Infrastructure and Access Management organization within AT&T. In this organization, I gained familiarity with many of the regulatory issues surrounding AT&T's local market entry, including issues regarding the unbundling of incumbent local exchange company (LEC) networks. I was on the AT&T team that negotiated with SWBT regarding unbundled network element definitions and methods of interconnection.

II. SCOPE OF STATEMENT AND SUMMARY

9. The purpose of our testimony is to discuss SWBT's failure to provide interconnection and unbundled network elements (UNEs) in a manner required by the Act and the Commission's regulations. In preparing this testimony, we have reviewed, among other materials, the interconnection agreements approved by the Oklahoma Corporation Commission (OCC),[1] SWBT's Statement of Generally Available Terms and Conditions filed in Oklahoma (SGAT), the affidavits of various witnesses submitted by SWBT in support of its Section 271 application, and the report and order arising from arbitration proceedings before the OCC between AT&T and SWBT (Oklahoma Arbitration Order).[2] Specifically, our testimony will show that SWBT has not

[1] It is our understanding that the OCC has approved interconnection agreements between SWBT and the following entities: Brooks Fiber Communications (Brooks), Dobson Wireless, Inc. (Dobson), ICG Telecom Group, Inc. (ICG); Sprint Communications (Sprint), US Long Distance Inc. (USLD), and Western Oklahoma Long Distance (WOLD). The Dobson and WOLD agreements concern the resale of telecommunications service exclusively.

[2] The Arbitrator's Report was issued on November 13, 1996 and the OCC's Order Regarding Unresolved Issues was entered on December 12, 1996, in OCC Docket No. PUD 960000218.

provided interconnection or access to UNEs sufficient to satisfy the following five items from the "competitive checklist" found in Section 271(c)(2)(B):

- nondiscriminatory access to UNEs, § 271(c)(2)(B)(ii);
- unbundled local switching, § 271(c)(2)(B)(vi).[3]
- unbundled local loop transmission, § 271(c)(2)(B)(iv);
- unbundled local transport, § 271(c)(2)(B)(v); and
- interconnection, § 271(c)(2)(B)(I);

In addition, our testimony will show how SWBT has failed to meet its obligations regarding physical collocation -- which is required by Section 252(c)(6) as a means for providing interconnection and access to UNEs -- by declining to provide, in its interconnection agreements, SGAT, and negotiations, any specific pricing, scheduling, or location information for collocation.

10. Initially, before identifying the specific restrictions to UNE access under the SWBT interconnection agreements and SGAT, it is important to recognize the continuing resistance SWBT has shown toward the unbundled "platform." The unbundled platform is a combination of UNEs that permits a new local service provider to offer local exchange and exchange access services using the incumbent LEC's facilities.[4] The availability of the platform is critical to AT&T's entry into the Oklahoma market. Yet SWBT repeatedly has voiced its opposition to the platform. Indeed, SWBT refused even to negotiate most UNE issues until the Commission issued the First Report and Order, which required that incumbent LECs provide

[3] Other AT&T witnesses will address other items on the competitive checklist.

[4] Specifically, the unbundled platform consists of the unbundled loop, local switching, common transport, tandem switching, signaling and call-related data bases, and operator services and directory assistance.

unrestricted access to UNEs and combinations of UNEs.[5] Even after the Commission's clear statements in the First Report and Order directing incumbent LECs to provide unfettered access to the platform, however, SWBT has forced AT&T to arbitrate the right to use the complete platform of unbundled elements in each of the five SWBT local service states, losing each ruling.[6] SWBT has appealed the first of those rulings, in Texas, characterizing the use of the UNE platform as "sham unbundling."[7] Most recently, in a letter dated April 11, 1997, from SWBT to AT&T, SWBT referred to AT&T's intent to use a UNE platform to provide services as an effort to "arbitrage resold services."[8] It is not surprising, therefore, that SWBT has raised the obstacles described below to impede the availability of the UNE platform in Oklahoma.

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[5] Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, First Report and Order, FCC 96-325 (rel. Aug. 8, 1996) (First Report and Order).

[6] *See* Oklahoma Report And Recommendations Of The Arbitrator at 5, Oklahoma Corporation Commission, Cause No. PUD 960000218 (Nov. 13, 1996) (Oklahoma Arbitrator's Report); Texas Arbitration Award at 6, Public Utility Commission Of Texas, PUC Docket Nos. 16189, 16196, 16226, 16285, and 16290 (Nov. 7. 1996) (Texas Arbitration Award); Kansas Arbitration Order at 43, Kansas Corporation Commission, Docket No. 97-AT&T-290-ARB (Feb. 6, 1997) (Kansas Arbitration Order); Missouri Arbitration Order at 13, Missouri Public Service Commission, Case No. T0-97-40 (Dec. 3, 1996); AT&T Communications Of The Southwest, Inc.'s Petition For Arbitration Of Unresolved Issues With SWBT Pursuant To § 252(b) Of The Telecommunications Act Of 1996 at 28, Arkansas Public Service Commission, Docket No. 96-395-U, Order No. 5 (Arkansas Arbitration Order).

[7] Southwestern Bell Telephone Company v. AT&T Communications of the Southwest, Inc., et al., Civil Action No. A-97-CA-4455, United States District Court for the Western District of Texas, Austin Division, Complaint For Declaratory and Injunctive Relief at p. 19, ¶ 49 and p. 28, ¶ 72 (filed January 1997).

[8] Letter from Stephen M. Carter, SWBT, to Rian Wren, AT&T at 1 (April 11, 1997). A copy of this letter is attached to this affidavit as Attachment 1.

11. Our testimony shows how the "competitive checklist" requirements are not met by either (i) SWBT's Oklahoma interconnection and access agreements, or (ii) SWBT's SGAT. In summary, we demonstrate below that, at the present time in Oklahoma, SWBT is neither providing nor offering nondiscriminatory access to unbundled network elements on the terms and conditions required under the Act. First and foremost, there has been no implementation of UNE purchasing in Oklahoma. To our knowledge, not a single unbundled loop has been provisioned to a competing local exchange carrier (CLEC) anywhere in Oklahoma.[9] Nor has SWBT provisioned unbundled local switching, or any other element of its network. SWBT has not even made an attempt to establish that it is actually providing any UNE access, or even that it has the capability of providing UNE access, relying instead on unfulfilled promises to provide access in its interconnection agreements and SGAT. SWBT cannot satisfy the checklist on this record.

12. Even if the Commission were to focus only on the face of the approved interconnection agreements and the SGAT, SWBT could not satisfy the checklist. SWBT's Oklahoma interconnection agreements and its SGAT cannot satisfy the checklist because they impose limits on CLECs' use of UNEs that do not apply to SWBT and are not recognized under the Act. The following summarizes the most notable restrictions:

- SWBT's decision to treat all UNE platform orders as "disconnect/reconnect" orders for "design services" will cause unnecessary

[9] It is our understanding that Brooks Fiber has postponed its plans to request unbundled loops from SWBT in Oklahoma because of extensive delays Brooks has encountered in collocating its equipment. *See infra* at ¶ 79.

service interruptions, unwarranted charges, and inferior service for customers whom a CLEC converts from SWBT retail service to CLEC service using the UNE platform.

- SWBT has restricted the use of the unbundled local switch by denying CLECs the right to collect originating and terminating access charges for 800 service calls, terminating exchange access charges, and intraLATA toll revenue charges arising from use of those switches.
- SWBT has made no showing that it is ready to deliver customized routing, and it pledges no timetable for such delivery.
- SWBT precludes access to DS1 trunk ports, a critical part of unbundled local switching necessary for customized routing and dedicated transport between unbundled switches.
- SWBT has reserved the right to restrict access to unbundled loops behind an Integrated Digital Loop Carrier, and thus has not fully unbundled the local loop.
- SWBT has imposed discriminatory provisioning intervals for loops.
- SWBT denies CLECs full multiplexing functionality in dedicated transport.
- SWBT's physical collocation provisions are too vague -- leaving pricing, scheduling, and location unknown -- to satisfy the requirements of the Act.
- SWBT precludes access to "dark fiber," even though such access has been required by each state regulatory commission in SWBT's five-state region.

13. In short, SWBT cannot meet the checklist because SWBT is not providing UNE access in Oklahoma, has made no showing that it could provide such access in any meaningful way, and proposes to offer such access in ways that are wholly inadequate and discriminatory.

III. SWBT NEITHER PROVIDES NOR OFFERS NONDISCRIMINATORY ACCESS TO THE FULL UNE PLATFORM

14. Item (ii) of the competitive checklist requires that SWBT provide access to UNEs in accordance with the requirements of Section 251(c)(3) of the Act, which includes the requirement that SWBT provide UNEs "in a manner that allows requesting carriers to combine the elements in order to provide ... telecommunications service." The Commission's rules implementing this section make clear that incumbent LECs must allow requesting carriers to combine the elements without restriction: "[a]n incumbent LEC shall not impose limitations, restrictions or requirements on requests for, or the use of, unbundled network elements that would impair the ability of a requesting telecommunications carrier to offer a telecommunications service in the manner the requesting telecommunications carrier intends."[10] Similarly, the Oklahoma AT&T Arbitration Order holds that "there should not be any restrictions placed on what unbundled elements may be purchased and reconfigured."[11]

15. One possible use of UNEs for a new entrant is to order from the incumbent LEC the complete combination of elements needed to deliver telecommunications service to a customer through a physical configuration of network facilities that is unchanged from the

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[10] 47 C.F.R. § 51.309.

[11] Oklahoma Arbitration Order at 5.

facilities that serve him or her today. That is, the new entrant who "wins" a customer from the incumbent LEC could order the local loop and local switching that serve that customer, together with other network elements (common transport, tandem switching, signaling and databases, operator services and directory assistance) that would be needed to deliver the end-to-end service to that customer.

16. AT&T's market entry strategy in Oklahoma is based on the availability of the UNE platform. The platform will provide AT&T with the means not only to replicate a customer's existing service, but also to offer services it could not provide as a pure reseller of telecommunications services. The key to the platform is that it enables a new entrant such as AT&T to purchase the unbundled elements and, along with them, the "features, functions, and capabilities" that are provided by means of those elements.[12] From such a platform, the new entrant may begin to offer additional services that it cannot provide by reselling the incumbent LEC's services. A new entrant relying on resale can only mimic the incumbent LEC's retail services. A UNE platform, by contrast, provides the means by which a new entrant may offer services that are differentiated from the incumbent LEC's products and services, without having to enter the market with a network that duplicates the incumbent LEC's existing network.[13]

17. An example of the potential benefits of the platform over resale is SWBT's promotion in Oklahoma of a combination of features known as "The Works." This feature

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[12] Act, Section 3(a)(45).

[13] The Commission's First Report and Order, at ¶ 332, recognized these very benefits of the UNE platform: "[C]arriers using solely unbundled elements, compared with carriers purchasing services for resale, will have greater opportunities to offer services that are different from those offered by incumbents."

package comes with 13 features and is priced at $15.00. However, if a new entrant identified a particular market segment in Oklahoma to which it wanted to offer a comparable feature package with only eight of the thirteen "works" features, an offer currently not available with SWBT, the new entrant's costs would be the individual wholesale price for each of the eight features.[14] Given Oklahoma's 19.8% discount, the applicable wholesale would be $16.64 for business customers. As this calculation demonstrates, the wholesale price the new entrant would be required to pay for only eight features for business customers is higher than the retail price for "The Works." In this case, a CLEC's only alternative would be to acquire "The Works" at the wholesale price, and either mimic SWBT's retail offer, or market only the eight features package, but at no additional savings to the end user customer over SWBT's thirteen feature package. As a result, the new entrant would not be able to introduce this new combination of features to the local market for business customers under resale at competitive prices. Nonrecurring costs associated with the creation of the new entrant's feature package only exacerbate this situation. However, with the platform, the new entrant would readily be able to offer such new feature combinations without relying on SWBT's pricing or entry timing.

18. The UNE platform also is important because it provides a ready stepping-stone to facilities-based competition. With time and development of its customer base, a competitor that initially enters the market through the UNE platform can begin to replace the

[14] For the purposes of this exercise the following eight features were selected: Call Waiting, Call Forwarding, Remote Access to Call Forwarding, Three Way Calling, Speed Calling, 8 Call Return, Auto Redial, and Call Blocking. The monthly retail price for these eight features under SWBT pricing is $20.75 for business customers. The wholesale price under Resale for these eight features is $16.64 for business customers.

incumbent LEC's network elements with its own facilities. For example, in Oklahoma, AT&T intends to provide operator and directory assistance by using its own OS/DA facilities, which it will access via customized routing in the UNE local switch. Indeed, in its First Report and Order, the Commission recognized the benefits of this particular combination, finding "that unbundling both the facilities and functionalities providing operator services and directory assistance as separate network elements will be beneficial to competition and will aid the ability of competing providers to differentiate their service from the incumbent LECs."[15]

19. The Commission has rejected the position, advanced by some incumbent LECs, that a carrier must own or operate some of its own facilities before it may order unbundled network elements. In the First Report and Order, the Commission stated broadly:

> The 1996 Act . . . does not impose any limitations on carriers' ability to obtain access to unbundled network elements. Moreover, we conclude that Congress did not intend to limit access to unbundled elements in this manner because such a limit would seriously inhibit the ability of potential competitors to enter local markets through the use of unbundled elements, and thus would retard the development of local exchange competition.[16]

The Commission specifically recognized that a carrier may order and combine UNEs to offer the same services that incumbent LECs offer for resale.[17] The Commission concluded that granting new entrants unrestricted access to UNEs, including combining UNEs to offer precisely the same services as offered by the incumbent LEC, would promote competition:

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[15] First Report and Order ¶ 536; *see also id.* (requiring "incumbent LEC's, to the extent technically feasible, to provide customized routing, which would include such routing to a competitor's operator services or directory assistance platform").

[16] First Report and Order ¶ 329.

[17] *See* First Report and Order 331.

> [W]e conclude that allowing carriers to use unbundled elements as they wish . . . will lead to more efficient competition in local phone markets. If we were to limit access to unbundled network elements to those markets where carriers already own, or could efficiently build, some local exchange facilities, we would limit the ability of carriers to enter local markets under the pricing standard for unbundled elements to those markets that could efficiently support duplication of some or all of the incumbent LECs' networks. We believe that such a result could diminish competition, and that allowing new entrants to take full advantage of incumbent LECs' scale and scope economies will promote more rapid and efficient entry and will result in more robust competition.[18]

20. As detailed below, notwithstanding the Commission's rules and the arbitration results, SWBT continues to raise unlawful barriers to use of the UNE platform in Oklahoma.

A. SWBT Discriminates Against A CLEC's Use Of The Full UNE Platform By Requiring Unnecessary Service Interruptions And Unjustified Nonrecurring Charges.

21. SWBT's interconnection agreement with Sprint for Oklahoma provides that, when converting a SWBT account to Sprint UNE service, "the conversion will be handled as a disconnect of the current account and a coordinated new connect of the unbundled network elements account."[19] Moreover, in current Oklahoma negotiations, SWBT has made clear to

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[18] First Report and Order ¶ 340. Each state commission in the Southwest Region that has been presented with the issue by AT&T and SWBT, including Oklahoma, has concluded, like the Commission, that AT&T may recombine unbundled network elements without restriction, including combinations to create a service that SWBT provides at retail. *See* Oklahoma Arbitration Order at 5; Texas Arbitration Award at 6; Kansas Arbitration Order at 43; Missouri Arbitration Order at 13; Arkansas Arbitration Order at 28.

[19] *See* Sprint/SWBT Agreement Attachment UNE ¶ 2.16. The SGAT also provides that the conversion of a SWBT account to a CLEC's UNE service will be handled as a disconnect of the current account and a new connect of the unbundled network element account. SGAT APPENDIX UNE ¶ 2.13. The other approved interconnection agreements that discuss UNEs are (continued...)

AT&T that it will treat all UNE orders, including orders of the UNE platform, as orders for a "design service" that will require a disconnection and then reconnection of service for the customer.[20] SWBT's position, for which there is no technological justification, poses serious competitive disadvantages to CLECs attempting to win and serve customers by ordering UNE combinations, and plainly provides access to UNEs that is inferior to the access SWBT provides itself. SWBT thus has not satisfied the checklist requirement that it provide unrestricted, nondiscriminatory access to UNEs.

22. SWBT serves a residential POTS customer in Oklahoma today through a local loop that runs to that customer's premises and a switch port on the line-side of the SWBT local switch. The local switch may supply various features to the customer, and his or her calls utilize SWBT's signaling system and call-related databases, its OS/DA platform, and its interoffice transport and tandem switches. All those network elements are in place and operational. As the Act and implementing regulations make clear, a new entrant who wins that customer's business must be allowed to serve that customer, if it chooses, by ordering all the SWBT elements in combination to provide service.[21]

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[19](...continued)
silent on whether all conversions to UNE service will involve a disconnection of service. *See* Brooks/SWBT Agreement, Appendix UNC; USLD/SWBT Agreement, Appendix UNC; ICG/SWBT Agreement § 9; *but cf.* ICG/SWBT Agreement § 9.6 (discussing disconnection intervals for unbundled loops).

[20] In its reply comments before the OCC, SWBT acknowledged that "there may be ... service outages as a result" of changing customers to CLEC UNE-based service. Reply Comments Of Southwestern Bell Telephone Company In Support Of Commission Endorsement Of Full InterLATA Competition In Oklahoma, at 34.

[21] *See supra* ¶ 18.

23. SWBT's POTS circuits currently are maintained under the Local Maintenance Operation System (LMOS). That system interfaces with the Mechanized Loop Testing (MLT) system to provide automated loop testing through the local switch. There is no technical reason why a local loop and switch port maintained under LMOS today could not be maintained under that system when purchased in combination as unbundled network elements.

24. In order to transfer such a customer from SWBT retail service to service provided by the CLEC through all of the same UNEs, the only SWBT activity technically required is in the area of operations support systems (OSS), so that SWBT's systems will create the appropriate billing to the CLEC for the elements, track the elements for maintenance purposes, and create the usage data to be provided to the CLEC for its billing purposes. *No physical change to the elements that are delivering telephone service to the customer is required,* unless the CLEC requests customized routing out of the unbundled local switch, *e.g.*, to the CLEC's own operator services/directory assistance service.[22] As a technical matter, such a customer could be converted to UNE-based service from the CLEC without any interruption of service and without the CLEC incurring any cost other than the cost associated with processing the relevant OSS orders. No work would be required within the loop or switch itself. It is, or should be, entirely an OSS transaction.

[22] Even when customized routing is requested, the only change required at the time of converting a customer to UNE-based service is the execution of a "recent change order" in the switch, which requires interruption of customer service only for the length of time necessary for processing the change, which should be a fraction of a second. Again, no rearrangement of physical facilities is required for this change.

25. Despite the fact that there is no technical reason to transfer circuits ordered as UNEs from LMOS, SWBT has informed AT&T that it plans to transfer all such circuits to its Work Force Administration system (WFA). That system has ordinarily been used in the past for special design circuits, such as PBX trunks, and would require SWBT to use its Special Maintenance Access System (SMAS) and Special Access Remote Testing System (SARTS) in order to test loops. These are non-automated systems, which allow a technician to sectionalize a circuit and locate the source of a trouble. In order to use SMAS and SARTS for its local loops, SWBT will have to install a SMAS test point, requiring a physical disconnection of service over that loop.

26. Use of the WFA and SMAS/SARTS systems is not necessary, for example, for UNE orders where a CLEC (i) orders in combination the loop and switch port that currently serve a SWBT customer who is converting to the CLEC's UNE-based service, and (ii) provides services for the customer that match those provided by SWBT. In that event, the loops can be maintained under LMOS, and tested through the local switch using the MLT system. For no apparent technical reason, however, SWBT has decided not to use LMOS and MLT, and has chosen instead to use the WFA and SMAS/SARTS systems. This decision has enormous anticompetitive consequences. The transfer of all UNE circuits to the WFA system, with the installation of SMAS test points in local loops, creates a serious competitive disadvantage to new entrants, and denies them the ability to combine network elements in order to provide a telecommunication service on a basis equivalent to SWBT.

27. One consequence of SWBT's decision to treat all UNE circuits as special design circuits is that it requires a customer service outage whenever a SWBT customer is

converted to UNE-based service. Such a service outage is necessary in order to install a SMAS test point in the local loop. For a new entrant to be required to tell its prospective customers that they must expect an interruption of service, even if brief, represents a very serious competitive disadvantage, both for residential and business customers. Moreover, the length of time that service would be disconnected is likely to be significant. SWBT has advised AT&T that it "anticipates" that a single disconnect/reconnect by SWBT for a customer switching to UNE-based service from a CLEC would take "an average of 30 minutes or less."[23] SWBT has made no pledge, however, in any of its approved Oklahoma agreements or in the SGAT, to meet any specific performance standard for such a disconnect/reconnect, either as to the time when the disconnect will occur or how long it will last.[24] CLECs (and their prospective customers), therefore, are left in the dark on this important topic.

28. SWBT has no legitimate reason for doing this. When asked by AT&T's negotiating team to explain why SWBT was planning to transfer all UNE circuits to the WFA system, SWBT initially responded that such a transfer was necessary to allow them to provide AT&T with billing information using the carrier access billing system (CABS), which AT&T had

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[23] Letter from Robert Bannecker, SWBT, to Carlos de la Fuente, AT&T, dated March 31, 1997. A copy of this letter, and the E-mail message to which it is responding (E-mail dated March 25, 1997, from Carlos de la Fuente to Robert Bannecker), are attached as Attachment 2.

[24] Although the Sprint agreement provides that network elements provided by SWBT will "be at least equal in quality and performance as that which SWBT provides to itself," Sprint Agreement, Attachment 6, ¶ 2.17.1, it is unclear how, or whether, this vague "parity" standard would apply in the area of disconnect/reconnect, given the fact that SWBT does not provide this disconnect/reconnect "service" to itself. The Sprint agreement also provides that the parties will jointly define performance data to measure UNE performance against the parity standard, *see* Sprint Agreement, Attachment 6, ¶ 2.17.7, but, to our knowledge, no such performance measures have been developed. *See also* SGAT, APPENDIX UNE, ¶ 2.14.1 (setting forth the same general parity standard, but without any pledge to develop specific performance data).

requested.[25] AT&T then asked whether dropping its request for CABS billing would change SWBT's position. SWBT responded that the UNE circuits would be transferred to WFA regardless whether CABS billing was requested or not.

29. In addition, the decision to transfer UNE circuits to WFA and install a SMAS point effectively precludes use of the platform to serve the approximately eight percent of SWBT's customers provisioned through SWBT's use of an Integrated Digital Loop Carrier (IDLC), as explained below in paragraph 55.

30. For these reasons, the transfer of all UNE circuits to the WFA system, with the installation of SMAS test points in local loops and the disconnection of service required thereby, places new entrants at a serious competitive disadvantage. Such a practice by SWBT thus cannot meet the requirements that incumbent LECs "provide unbundled elements under terms and conditions that would provide an efficient competitor with a meaningful opportunity to compete."[26] The end result is precisely what the Commission has found the Act directs incumbent LECs not to do: "impos[e] limitations, restrictions, or requirements on requests for, or the sale or use of, unbundled elements that would impair the ability of requesting carriers to offer telecommunications services in the manner they intend."[27] Indeed, disconnecting the unbundled loop from the unbundled switch, when those elements are ordered in combination, violates the Commission's specific holding in the First Report and Order that "section 251(c)(3) bars

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[25] Other incumbent LECs (NYNEX and Bell Atlantic) have advised AT&T that CABS billing is available for UNE circuits maintained in LMOS, and thus there is no technical reason why SWBT could not also provide CABS billing without transferring the UNE circuits to WFA.

[26] First Report and Order ¶ 315.

[27] First Report and Order ¶ 292.

incumbent LECs from separating elements that are ordered in combination, unless a requesting carrier specifically asks that such elements be separated."[28]

31. Finally, SWBT's decision to treat orders for UNEs as "disconnect/reconnect" orders for "design service" has provided SWBT with an excuse to impose unnecessary nonrecurring charges that cannot meet the requirements of Section 252(d)(1) that rates for UNEs be based on cost. Under the Oklahoma Sprint interconnection agreement, for example, an order for the UNE platform would result in nonrecurring charges of $47.45 for the loop, $82.60 for the switch port, or $130.05.[29] On top of that SWBT proposes to add an unspecified amount for service order processing. Yet the conversion of the SWBT loop and switch port to UNE service for the CLEC requires no activity on SWBT's part other than service order processing. Any costs incurred by SWBT involving the transfer of UNE circuits from LMOS to the WFA system are wholly unnecessary from the CLEC's perspective. It is unlawful for SWBT to impose additional charges for activities that have not been requested by CLECs and are not technically necessary to provision the order.

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[28] First Report and Order ¶ 293; *see also* 47 C.F.R. 51.315(b) ("Except upon request, an incumbent LEC shall not separate requested network elements that the incumbent LEC currently combines.")

[29] Sprint Agreement, Attachment 6, ¶ 13.6.3 and Appendix Pricing UNE. Similarly, under the SGAT, a CLEC who ordered a 2-wire analog loop and analog line port in combination (if UNEs actually can be ordered under the SGAT) would incur a nonrecurring charge of $47.45 for the loop, $80.50 for the switch port, plus a "new service" service order charge of $60.00, a total of over $187.95. SGAT APPENDIX PRICING Schedule at 9.

B. SWBT's Decision To Transfer UNE Circuits To WFA Discriminates Against CLECs By Providing Inferior Service And By Creating An Unnecessary Bottleneck For Processing UNE Orders

32. SWBT's decision to place all UNE circuits in the WFA system also will result in inferior service for the customers of CLECs with UNE-based service, and will create an unnecessary bottleneck for processing UNE-based service orders. Neither result can be squared with the requirement that "the quality of an unbundled network element that an incumbent LEC provides, as well as access provided to that element ... must be at least equal-in-quality to that which the incumbent LEC provides to itself."[30]

33. For POTS circuits administered in LMOS, the MLT system in SWBT's local switches runs regular routines that test loops and reports problem loops. This automated testing thus enables SWBT to identify problems with its POTS circuits before its POTS customers recognize any problem. Once POTS circuits are transferred to WFA, however, the CLEC's UNE-based customers will lose the preventive benefits of automated MLT testing. WFA and SMAS/SARTS do not provide automated proactive testing. They are reactive systems, meaning that problems are identified and addressed only after the customer identifies a problem. SWBT's planned changeover of CLEC's UNE-based customers to the WFA system, therefore, results in the CLEC's POTS customers receiving service that is technically inferior to the service provided to SWBT's own POTS customers, whose circuits will continue to be maintained under LMOS. There is no technical justification for this discrimination.[31] In addition, MLT, in combination with

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[30] First Report and Order ¶ 312.

[31] AT&T has complained to SWBT about the inferior service that would be provided UNE customers over the WFA system. SWBT's response was to urge AT&T to eschew use of UNEs (continued...)